



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: Meeting Minutes
King Coal Highway/Buffalo Mountain Surface Mine

Date: March 22, 2013

From: Thomas J. Smith, P.E.
Division Administrator
Charleston, WV

Reply to
Attn of: HDA-WV

To: Meeting Participants (see Attachment A)

Purpose: To provide a status update of the National Environmental Policy Act (NEPA) process and discuss the RAM 145 Alternative. A meeting agenda is provided in Attachment B.

Agency Updates: Tom Smith with the Federal Highway Administration's West Virginia Division (FHWA) opened the meeting and provided a status of the Draft Supplement Environmental Impact Statement (SEIS) for the King Coal Highway Delbarton to Belo Project and the Buffalo Mountain Surface Mine Clean Water Act (CWA) Section 404 Permit Application.

- The Draft SEIS was approved by FHWA, the U.S. Army Corps of Engineers (Corps) and the West Virginia Department of Transportation, Division of Highways (WVDOH) on March 18, 2013.
- The Draft SEIS was filed electronically with the U.S. Environmental Protection Agency (USEPA) via their e-NEPA website on March 19, 2013.

Mr. Smith stated that FHWA was encouraged by the interagency collaboration during the development of the Draft SEIS and was happy to facilitate the discussion of the technical details of the RAM 145 Alternative. He added that the RAM 145 Alternative agenda items reflect those provided by Shawn Garvin of U.S. Environmental Protection Agency (USEPA), Region 3.

Opening statements and status updates were provided by representatives of the Corps, WVDOH, West Virginia Department of Environmental Protection (WVDEP), Consol Energy, Incorporated (CONSOL) and USEPA.

- Lieutenant Colonel William Reding and Ginger Mullins with the Corps Huntington District confirmed the current status of the Draft SEIS and stated that the Corps looks forward to continued interagency cooperation as the NEPA and Clean Water Act Section 404 Permit Application evaluation process continues.
- Greg Bailey with the WVDOH stated he was grateful for federal and state agency collaboration on the development and finalization of the Draft SEIS and that the subject project has very strong community support.
- Tom Clarke with the WVDEP stated that his agency has issued three of the four environmental approvals required for the subject project and they are interested in the final outcome of the FHWA, WVDOH and Corps actions.
- Ed Fanning with CONSOL acknowledged that the environmental process has been long and frustrating; however, CONSOL is looking forward to working with the agencies during the next phase of the NEPA

process.

- Randy Pomponio with USEPA Region 3 stated that his agency has provided comments on three Draft SEIS chapters and that Draft SEIS Chapter 4 was still under review. He added that USEPA continues to have serious concerns about the subject project because USEPA believes that less environmentally damaging alternatives are available. The agency's concerns as a cooperating agency on the SEIS led them to hire a consultant, Morgan Worldwide Consultants, Inc. (MWC), to explore minimization alternatives for the project.

Overview of the RAM 145 Alternative:

- Mr. Pomponio asserted that MWC had participated in several meetings to discuss the RAM 145 Alternative. It was determined however that only one meeting had occurred. The meeting was held on December 4, 2012 in Morgantown, West Virginia and attendance was limited to FHWA and the Corps. Mr. Smith added that additional information regarding the RAM 145 Alternative was needed to fully evaluate the practicability of the alternative and that WVDOH and CONSOL requested the information; however, USEPA has not responded to this information request. Additionally, CONSOL indicated that USEPA had committed to providing them additional information and a meeting to discuss the alternative information but has not done so prior to today's meeting.
- Jeff Lapp (USEPA Region 3) stated that USEPA was disappointed that the Draft SEIS was issued before the meeting to discuss the RAM 145 Alternative was held; however, he acknowledged that USEPA understood that agency dialogue regarding alternatives for the project would continue before the Final SEIS was issued.
- John Morgan (MWC) explained that the USEPA contracted his engineering firm to review alternatives from a CWA Section 404 alternative minimization perspective and to develop alternatives for two types of projects, a surface mine and a surface mine with a highway. MWC asked USEPA to provide CONSOL's geological model for the proposed Buffalo Mountain Surface Mine; however, since USEPA did not provide CONSOL's geologic model, MWC developed a geologic model based on publically available data.
- Mr. Morgan acknowledged that the AOC+ Policy was developed as a result of the Bragg vs. Robertson litigation and stated he was one of the engineers who developed the AOC+ Model used in to design valley fills for coal mine projects West Virginia. He also developed the RAM 145 Model that is used to design valley fills for coal mine projects in Kentucky. He explained that while there are differences in the AOC+ and RAM 145 Models, the overall purpose of both models is to evaluate the capacity of a valley fill location and to "optimize" the amount of excess overburden that could be placed within the fill in order to minimize the length of stream that would be permanently filled. Mr. Morgan stated that the USEPA's scope of work required his company to use the RAM 145 Model to develop minimization alternatives for the Buffalo Mountain Surface Mine project.
- Mr. Morgan provided an overview of the information provided in the 13-page document that USEPA provided to the Corps in November 2012.

Summary of the Technical Discussion of the RAM 145 Alternative:

- MWC stated that CONSOL did not apply the AOC+ Model correctly. CONSOL stated that they applied the AOC+ Model as specified by WVDEP's surface coal mining regulations; however, the Buffalo Mountain Surface Mine has an AOC variance which is a deviation from the AOC+ Policy.
- The WVDEP stated that the RAM 145 Alternative may not comply with local land use policies. The WVDEP and WVDOH were concerned that the USEPA would propose an alternative that would not comply with land use planning policies and regulations in West Virginia. The USEPA stated that the RAM 145 Alternative was developed to satisfy the purpose and need for the project which was a coal mine that would allow for future highway development; secondary development was a secondary issue that was not included in the purpose and need for the project.
- The WVDEP and WVDOH had numerous questions associated with the drainage control plan for the RAM

145 Alternative. Specifically, the WVDEP expressed concerns that the RAM 145 Alternative routed surface water run-off to un-mined watersheds, which is prohibited by West Virginia Surface Coal Mine Regulations. The WVDOH was concerned that the use of the road bed to control surface drainage during coal mining may require additional maintenance when the highway is completed and operational. MWC stated that the drainage control plan for the alternative was conceptual and that additional work would need to be performed.

- CONSOL was concerned that the RAM 145 Alternative did not consider stream impacts associated with temporary sediment control basins. USEPA stated that the stream impacts associated with the RAM 145 Alternative were permanent stream impacts associated with valley fill construction.
- The WVDEP stated that the design of some of the valley fills proposed with the RAM 145 Alternative would not meet West Virginia Surface Coal Mine Regulations.
- The WVDOH stated that the RAM 145 Alternative did not provide enough information on the highway alignment to make a determination regarding compliance with current highway design criteria. Specifically, the WVDOH stated that it appeared that the grade was too steep in the northern portion of the project area.

Next Steps:

- FHWA offered to facilitate future technical meetings to discuss the practicability of the RAM 145 Alternative. All parties requested additional information including the final technical analysis and detailed mapping from USEPA and MWC.
- USEPA indicated that their contract was coming to completion with MWC and they were unsure at this time if they would be able to distribute the final report and/or participate in further meetings. However, they did commit to providing detailed mapping for the RAM 145 Alternative.
- Action items identified for the RAM 145 Alternative.
 - Consideration of the RAM 145 and AOC+ Models in relation to setting the toes of the fill
 - Consideration of land use planning in WVDEP's Regulations and WVDOH Policy
 - Clarification of whether permanent or temporary stream impacts were utilized in EPA summary
 - How does the RAM 145 Alternative affect the Surface Water Run-off Analysis (SWROA) and clarify surface water drainage diversions. How would any drainage considerations affect the future highway?
 - Clarification on the cut information associated with the Coalburg coal seam in valley fill 7
 - Consideration of the utility corridor in the post mine land use
 - EPA to provide higher resolution mapping and highway vertical and horizontal alignment design information
 - Economic viability associated with relocating valley fills and hauling material during mining
 - CONSOL is to investigate if they can provide additional geologic model info. To MWC

Meeting Adjourned.